

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

5

DECISION

TOPIC

Contract – IAMU – Agreement 2007-7158-01, Viability Technical Assistance

The Department requests Commission approval of a contract in the amount of \$298,969 with the Iowa Association of Municipal Utilities for Viability Technical Assistance.

The department was required by the Safe Drinking Water Act Amendments of 1996 to develop a strategy to assist public water systems in becoming or remaining technically, managerially, and financially viable. The capacity development strategy was developed with the input of a diverse group of stakeholders in 2000 that reconvened in 2005 and asked the department to focus on educating the bodies that govern public water supplies, namely city council and water system board members. These elected officials are responsible for the oversight of the state's public water systems though they usually do not fully understand the business of producing and selling water, and there is a high turnover rate as many of these people are essentially volunteers. This contract will provide on-site technical assistance to public water system personnel that are in need of developing technical, financial, and managerial skills to enable them to provide safe drinking water at a reasonable cost. It will also provide on-site council/board member training sessions to those systems that the department feels would benefit from the training, in keeping with the theme of council/board member training as outlined in the capacity development strategy.

Funding for this contract comes from Drinking Water State Revolving Fund (DWSRF) Other Authorized Use Set-aside, which may be used for implementing the state's capacity development initiatives.

The proposal from the Iowa Association of Municipal Utilities (IAMU) received the highest score from the committee based on the following reasons:

- IAMU has a history of providing viability technical assistance and board/council member training in Iowa, through a recent contract with the department
- IAMU has a history of hiring well trained professionals with certification in water treatment and distribution that add credibility to the assistance
- IAMU has done a good job in the past of working with central and field office staff to incorporate their recommendations into assistance provided
- Project cost was the lowest of three proposals

Charles C. Corell, Bureau Chief
Water Quality Bureau
Environmental Services Division
January 11, 2007

**IOWA DEPARTMENT OF NATURAL RESOURCES
AGREEMENT 2007-7158-01
with
IOWA ASSOCIATION OF MUNICIPAL UTILITIES**

Agreement Title: Viability Technical Assistance

Agreement Amount: \$ 298,969.00

Time of Performance: April 1, 2007 to March 31, 2010

Iowa Association of Municipal Utilities
Project Officer: Jill Soenen

Department of Natural Resources
Project Officer: Dennis Alt

Submit Original Invoice to:

Iowa Department of Natural Resources
Attn. Charlotte Lafargue Henderson
401 SW 7th Street, Suite M
Des Moines, IA 50309-4611

Issue Payment to:

Iowa Association of Municipal Utilities
Attn. Jill Soenen
1735 NE 70th Avenue
Ankeny, IA 50021-9353

SPECIAL TERMS AND CONDITIONS

ARTICLE 1. IDENTITY OF THE PARTIES

1.1 The Iowa Department of Natural Resources ("Department") is authorized to enter into this contract. The Department's address is 401 SW Seventh Street, Suite M, Des Moines, IA, 50309-4611.

1.2 The Iowa Association of Municipal Utilities ("Contractor") corporation is organized under the laws of the state of Iowa and authorized to do business in the state of Iowa. The Contractor's address is 1735 NE 70th Avenue, Ankeny, IA, 50021-9353.

ARTICLE 2. PURPOSE

The purpose of this contract is to retain the Contractor to provide one-on-one, on-site technical assistance and training for city council/water board members to public water supplies serving fewer than 10,000 people.

ARTICLE 3. DURATION OF CONTRACT

The term of this contract shall be April 1, 2007 to March 31, 2010, unless terminated earlier in accordance with the Termination section of this contract. The contract may be extended by giving the Contractor written notice prior to expiration and shall be based upon availability of funds, future needs, and the vendor's performance.

ARTICLE 4. DEFINITIONS

4.1 Department Project Officer responsible for oversight and negotiation of any contract modifications shall be

NAME	Dennis Alt, Supervisor
ORG	Iowa Department of Natural Resources
ORG	Water Supply Engineering Section
PHONE	515-725-0275
FAX	515-725-0287
EMAIL	dennis.alt@dnr.state.ia.us

Comment [A1]: Ed Tormey wants to add the Project Officer, Issuing Officer and Technical Advisor information for the Contractor.

4.2 Department Issuing Officer and primary contact for all issues and reporting requirements related to the contract shall be

NAME	Charlotte Lafargue Henderson
ORG	Iowa Department of Natural Resources
ORG	Water Supply Engineering Section
PHONE	515-725-0341
FAX	515-725-0287
EMAIL	charlotte.henderson@dnr.state.ia.us

4.3 Department Technical Advisor in charge of technical compliance of this contract shall be

NAME	Jennifer Bunton
ORG	Iowa Department of Natural Resources
ORG	Water Supply Engineering Section

PHONE 515-725-0298
FAX 515-725-0348
EMAIL jennifer.bunton@dnr.state.ia.us

4.4 The Iowa Association of Municipal Utilities Project Coordinator responsible for oversight and negotiation of any contract modifications shall be

NAME Jill Soenen, Water Services Coordinator
ORG Iowa Association of Water Agencies
PHONE 515-289-1999
FAX 515-289-2499
EMAIL jsoenen@iamu.org

4.5 Public Water System (PWS).

4.6 Public Water System Identification (PWSID).

4.7 Full Time Equivalent (FTE)

ARTICLE 5. SCOPE OF SERVICES

The Contractor shall provide the following services in accordance with the defined performance criteria as set forth below.

5.1 Conduct Training

The target audience for training shall consist of city councils/utility boards, water utility managers, operators, city clerks, and city administrators. The contractor shall dedicate one full FTE for this project.

5.1.1 Conduct On-site Training

The Contractor shall use the current Department-approved Viability Self-Assessment Manual and any other available training materials to provide on-site training on technical, financial and managerial aspects of water system operation. On-site technical assistance shall involve one-on-one contact with the public water supply to discuss and resolve viability issues, particularly providing technical assistance in deficient areas identified in the self-assessment manual. The Contractor shall have access to the variety of assistance tools that are available from various providers and shall choose the appropriate tool to assist the PWSs referred by the Department. Training specific to board or council members is of specific interest to the Department.

5.1.2 Conduct Water Board/City Council Member Training

The Contractor shall provide to PWS boards/councils referred by the Department a three-hour training session which will cover technical, financial, and managerial issues related to operating a PWS. Asset management shall be included in the technical and financial portions of the training. This training also shall be offered to communities not referred by the Department through the Contractor's website, newsletter, and workshops, and shall be conducted as time allows.

Comment [A2]: What does this mean? Do we care if they do any of this and do we want a way to keep track of it?

5.1.3 Conduct General Presentations

The contractor shall make presentations at the request of the Department or other technical assistance providers, such as AWWA.

5.2 Solicit PWS Candidates for On-Site Technical Assistance

The Department shall refer to the Contractor PWSs who are in need of technical assistance. The Contractor shall provide on-site comprehensive technical assistance to no fewer than 20 PWSs per year, for a minimum of at least 60 PWSs for the life of the 3-year contract. Depending on the type and amount of technical assistance necessary, more than 60 PWSs may be assisted.

The Department shall have the authority to add candidates throughout the contract period at no extra cost to the Department. The Contractor shall also provide assistance to any PWS requesting assistance, with approval from the Department.

Comment [A3]: Do you mean that DNR would give the Contractor a list of PWSs to add to the Contractor's list? Or do you mean that we can add to the total number of PWSs that will be served?

Comment [A4]: Who needs the approval to act, the PSW or the Contractor?

5.3 Contact PWS Candidates and Define Project Objectives

The Contractor shall contact the PWSs referred by the Department, including new systems, and offer technical assistance services. If the PWS is amenable to receiving assistance, the Contractor shall schedule an initial meeting. Based upon the results of this meeting, the Contractor shall determine what type of assistance is necessary, set the project objectives, develop an action plan, and assist the PWS in implementing the action plan.

The Contractor may also provide assistance to PWSs who contact the Contractor directly, provided the Department is in agreement and the Contractor responds to all of the Department referrals.

The Department shall not reimburse any assistance that the Contractor would normally provide to its members if the targeted PWS is a member.

5.4 Provide Technical Assistance

The Contractor shall make regular contacts and site visits with the selected PWSs to work toward the project objectives. The type of assistance provided will depend on the needs of the PWS, but will be focused on problem identification and transferring knowledge to the PWS so that they could solve a similar problem or develop a similar document in the future without assistance.

5.5 Contract Service Evaluation

5.5.1. Expected Outcomes

The ultimate goal of this contract is to assist the targeted PWSs to achieve and maintain compliance with Department requirements and the SDWA.

Comment [A5]: This needs to be in the definitions too or else it needs to be spelled out.

5.5.2. Objectives

The objective of the contract is to provide training and on-site technical assistance to at least 60 PWSs. The expected outcomes of the project are:

- Improve the ability for the PWS to resolve viability issues
- Assist PWSs in completing their viability self-assessment manual
- Consult with the PWSs in addressing the weak areas identified through the self-assessment
- Assist the PWS to return to a viable status as necessary, through working with PWS management and community leaders to develop policy, training, scheduling, or consolidation.
- Provide training to board/council members who govern many aspects of PWS operation to assist them in making decisions that enhance the viability of the systems.

5.6 Deliverables

5.6.1 The Contractor shall provide the following information to the Department:

Item	No Later Than
A certificate of insurance, which indicates coverage and notice provisions as required by this contract.	Beginning of contract
Copy of any contract, in electronic format agreed upon by the Contractor and the Department.	As completed
Quarterly reports, in electronic format agreed upon by the Contractor and the Department.	Quarterly, with the first being due on July 1, 2007
Summary of PWS evaluations of services provided	Quarterly, with the first being due on July 1, 2007
Teleconference call, face-to-face meeting or e-mail communication, quarterly or more frequently, as necessary, to discuss and report the status of the contract	As necessary (I would make these mandatory and schedule them in advance)

5.6.2 The Department will provide the following information and resources relative to this contract:

Item	No Later Than
Teleconference call, face-to-face meeting or e-mail communication, monthly or more frequently, as necessary, to discuss and report the status of the contract	As necessary
Evaluation of Technical Assistance	Within 30 days of each quarter's end

5.6.3 The Contractor shall provide the following information to the targeted PWSs:

Item	Date due:
Evaluation form to provide feedback on services provided and suggestions for improvement	Following completion of assistance
Follow-up contact with PWSs to ensure system is maintaining the goals of the technical assistance	Minimum of two quarters following completion of assistance

5.7 Industry Standards. Services rendered pursuant to this contract shall be performed in a professional and workmanlike manner in accordance with the terms of this contract and the standards of performance considered generally acceptable in the education and professional training profession for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

5.8 Non-Exclusive Rights. This contract is not exclusive. The Department reserves the right to select other Contractors to provide services similar or identical to the Scope of Services described in this contract during the term of this contract.

5.9 Key Personnel. If for any reason substitution of key personnel becomes necessary, the Contractor shall provide immediate written notification of such to the Department. The Contractor shall provide the name and a résumé of qualifications for the replacement individual. Any replacement shall be subject to the approval of the Department.

BUDGET

	<i>Requested from IDNR Year 1</i>	<i>Requested from IDNR Year 2</i>	<i>Requested from IDNR Year 3</i>
Salaries and Wages			
Water Services Specialist (100%)	\$43,500	\$44,805	\$46,149
Water Services Coordinator (3%)	\$1,522	\$1,568	\$1,615
Fringe Benefits (27%, 28%, 28%)			
Water Services Specialist (100%)	\$11,745	\$12,545	\$12,922
Water Services Coordinator (3%)	\$411	\$439	\$452
Total Personnel Costs	\$57,178	\$59,357	\$ 61,138
Travel (lodging, mileage, etc.)	\$ 15,000	\$15,500	\$16,000
Other Costs			
Indirect costs	\$ 20,012	\$20,775	\$ 21,398
Supplies/Copies	\$1,250	\$1,313	\$1,378
Postage	\$1,000	\$1,050	\$1,103
Printed Materials- Packets/handouts	\$1,750	\$1,838	\$1,929
Total Other Costs	\$24,012	\$24,976	\$25,808
TOTAL COSTS	\$ 96,190	\$99,833	\$102,946
TOTAL PROJECT COSTS			\$298,969

ARTICLE 6. COMPENSATION

6.1 Pricing. The Contractor shall be paid up to and not more than \$298,969.00 for the services described in the Scope of Services.

6.1.2 Contract Payment Schedule

Item	Invoice Amount	Invoice for Qtr. ending:
Status Report Apr-Jun 07	\$22,422.68	06/30/2007
Status Report Jul-Sep 07	\$22,422.68	09/30/2007
Status Report Oct-Dec 07	\$22,422.68	12/31/2007
Status Report Jan-Mar 08	\$22,422.68	03/31/2008
Status Report Apr-Jun 08	\$22,422.68	06/30/2008
Status Report Jul-Sep 08	\$22,422.68	09/30/2008
Status Report Oct-Dec 08	\$22,422.68	12/31/2008
Status Report Jan-Mar 09	\$22,422.68	03/31/2009
Status Report Apr-Jun 09	\$22,422.68	06/30/2009
Status Report Jul-Sep 09	\$22,422.68	09/30/2009
Status Report Oct-Dec 09	\$22,422.68	12/31/2009
Status Report Jan-Mar 10	\$22,422.68	03/31/2010
Final Report + Contract Sign-off	\$29,896.90	03/31/2010
	\$298,969.00	

6.2 Billings. The Contractor shall submit an invoice for services rendered in accordance with this contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514. The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this contract.

6.3 Delay of Payment Due to Contractor's Failure. If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this contract, the Contractor shall not be entitled to any compensation under this contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

6.4 Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the State any sum under the terms of this contract, any other contract, pursuant to any judgment,

or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

GENERAL TERMS AND CONDITIONS

The Special Terms and Conditions shall supersede any conflict with the General Terms and Conditions.

SECTION 1. TERMINATION

1.1 Immediate Termination by the Department. The Department may terminate this contract for any of the following reasons effective immediately without advance notice:

1.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect;

1.1.2 The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or sub-contractors have caused, or reasonably could cause, a trainee's life, health or safety to be jeopardized;

1.1.3 The Contractor fails to comply with confidentiality laws or provisions;

1.1.4 The Contractor furnished any statement, representation or certification in connection with this contract or the RFP which is materially false, deceptive, incorrect or incomplete.

1.2 Termination for Cause. The occurrence of or any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this contract.

1.2.1 The Contractor fails to perform, to the Department's satisfaction, any material requirement of this contract or is in violation of a material provision of this contract, including, but without limitation, the express warranties made by the Contractor;

1.2.2 The Department determines that satisfactory performance of this contract is substantially endangered or that a default is likely to occur;

1.2.3 The Contractor fails to make substantial and timely progress toward performance of the contract;

1.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

1.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this contract; or

1.2.6 The Contractor has engaged in conduct that has or may expose the Department to liability, as determined in the Department's sole discretion.

1.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

1.3 Notice of Default. If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:

1.3.1 Immediately terminate the contract without additional written notice; or,

1.3.2 Enforce the terms and conditions of the contract and seek any legal or equitable remedies.

1.4 Termination Upon Notice. Following sixty (60) days' written notice, the Department may terminate this contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this contract to the Department up to and including the date of termination.

1.5 Termination Due to Lack of Funds or Change in Law. The Department shall have the right to terminate this contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

1.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this contract;

1.5.2 Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;

1.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency;

1.5.4 The Department's duties are substantially modified.

1.6 Remedies of the Contractor in Event of Termination by the Department. In the event of termination of this contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the contract and for which the Department is obligated to pay pursuant to this contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Department under this contract in the event of termination. However, the Department shall not be liable for any of the following costs:

1.6.1 The payment of unemployment compensation to the Contractor's employees;

1.6.2 The payment of workers' compensation claims, which occur during the contract or extend beyond the date on which the contract terminates;

1.6.3 Any costs incurred by the Contractor in its performance of the contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the contract;

1.6.4 Any taxes that may be owed by the Contractor in connection with the performance of this contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of the Department, shall:

1.7.1 Cease work under this contract and take all necessary or appropriate steps to limit disbursements and minimize costs immediately, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Department may require.

1.7.2 Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.

1.7.3 Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this contract.

1.7.4 Cooperate in good faith with the Department, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.

1.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

SECTION 2. CONFIDENTIAL INFORMATION

2.1 Access to Confidential Data. The Contractor's employees, agents and subContractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the contract. The Contractor shall presume that all information received pursuant to this contract is public unless designated as confidential by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the contract. The Contractor shall provide adequate supervision and training to its agents, employees and subContractors to ensure compliance with the terms of this contract. The private or confidential data shall remain the property of the Department at all times.

2.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law

and with the written consent of the Department, either during the period of the contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the contract in whatever form it is maintained promptly at the request of the Department.

2.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

2.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

2.5 Survives Termination. The Contractor's obligation under this contract shall survive termination of this contract.

SECTION 3. INDEMNIFICATION

3.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

3.1.1 Any breach of this contract by the Contractor;

3.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subContractor utilized or employed by the Contractor;

3.1.3 The Contractor's performance or attempted performance of this contract, including any agent or subContractor utilized or employed by the Contractor;

3.1.4 Any failure by the Contractor to comply with lawful provisions of this contract;

3.1.5 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

3.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right by the Contractor; or

3.1.7 Any failure by the Contractor to adhere to the confidentiality provisions of this contract.

3.2 By the Department. The Department shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any

employee of the Department while acting within the scope of the employee's office of employment in connection with the performance of this contract.

3.3 Survives Termination. Indemnification obligation of the parties shall survive termination of this contract.

SECTION 4. INSURANCE

4.1 Insurance Requirements. The Contractor, and any subContractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

4.2 Types and Amounts of Insurance Required. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued the insurance coverages set forth below:

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Property Damage-not applicable where specifically covered under General Liability	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

4.3 Certificates of Coverage Certificates of Coverage.

All insurance policies required by this contract shall remain in full force and effect during the entire term of this contract and shall not be cancelled or amended. The Department shall be notified of any extensions or renewals thereof immediately upon change, not to exceed thirty (30) days. The Contractor shall submit certificates of insurance, which indicate coverage and notice provisions as required by this contract, to the Department upon execution of this contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department.

Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this contract.

SECTION 5. BONDS - No obligation pursuant to this contract.

SECTION 6. PROJECT MANAGEMENT AND REPORTING

6.1 Issuing Officer. At the time of execution of this contract, each party shall designate, in writing, an Issuing Officer to serve until the expiration of this contract or the designation of a substitute Issuing Officer. During the term of this contract, each Issuing Officer and Technical Advisor shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this contract.

6.2 Review Meetings. During the review meetings the Issuing Officers and Technical Advisor shall discuss progress made by the Contractor in the performance of this contract. Each party shall provide a status report, as desired by an Issuing Officer, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of contract performance shall be maintained by each party.

6.3 Reports. At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

- 6.3.1** Any event not within the control of the Contractor or the Department that accounts for the problem;
- 6.3.2** Modifications to the contract agreed to by the parties in order to remedy or solve the identified problem;
- 6.3.3** Damages incurred as a result of any party's failure to perform its obligations under this contract; and
- 6.3.4** Any request or demand for services by one party that another party believes are not included within the terms of this contract.

6.4 Problem Reporting Omissions. The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this contract or waive any other remedy under this contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this contract. Where other provisions of this contract require notification of an event in writing, the written report shall be considered a valid notice under this contract provided the parties required to receive notice are notified.

6.5 Change Order Procedure. The Department may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

- 6.5.1 Written Request.** The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.
- 6.5.2 The Contractor's Response.** The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.
- 6.5.3 Acceptance of the Contractor Estimate.** If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this contract.

SECTION 7. LIMITATION OF LIABILITY

The Contractor expressly acknowledges that this contract is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the above referenced project the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the contract pursuant to the termination provisions.

SECTION 8. INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

Once developed, all deliverables, such as reports, software and training materials, are works for hire and will become the sole property of the Department with the Department having the right to reproduce and distribute the products without restriction. Deliverables will not be subject to any claim of intellectual property, patent, or copyright by the Contractor, assignee or sub-Contractor. Upon completion of the total project, any final documents which may be used regularly in future operations by the Contractor, assignee or sub-Contractor shall be subject to review and approval by the Department and shall prominently display the Department's logo and shall contain the notation that cost for the project came from funds provided by the Department.

SECTION 9. WARRANTIES

9.1 Construction of Warranties Expressed in this contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this contract and the Proposal by the Contractor, whether or not this contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this contract and any extensions or renewals thereof.

9.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and works produced, or provided to the Department pursuant to the terms of this contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials and works and the Department's use of same and the exercise by the Department of the rights granted by this contract shall not infringe upon any other work, other than material provided by the contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, works and methodologies used in connection with providing the services contemplated by this contract.

9.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

9.4 Conformity with contractual Requirements. The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this contract.

9.5 Authority to Enter into contract. The Contractor represents and warrants that it has full authority to enter into this contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Department.

9.6 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

9.7 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

9.8 Industry Standards. The Contractor represents and warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the education and professional training profession in the performance of this contract.

9.9 Technology Updates. The Contractor represents and warrants that it shall continually use and integrate the most current and up-to-date technology commercially available where applicable to achieve the intent of this contract.

SECTION 10. CONTRACT ADMINISTRATION

10.1 Independent Contractor. The status of the Contractor shall be that of an independent Contractor. The Contractor, its employees, agents and any subContractors performing under this contract are not employees or agents of the State of Iowa or any division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the

State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

10.2 Incorporation of Documents. The RFP, and amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, form the contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the contract specifically directs otherwise.

10.3 Order of Priority. In the event of a conflict between the contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the contract; (2) the RFP; (3) Proposal.

10.4 Compliance with the Law. The Contractor, its employees, agents, and subContractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subContractors or suppliers. The Contractor, its employees, agents and subContractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this contract.

10.5 Amendments. This contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this contract must be in writing and fully executed by the parties.

10.6 Third Party Beneficiaries. There are no third party beneficiaries to this contract. This contract is intended only to benefit the State, the Department and the Contractor.

10.7 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

10.8 Assignment and Delegation. This contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

10.9 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this contract. All subcontracts shall be subject to prior approval by the Department. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this contract. All restrictions, obligations and responsibilities of the Contractor under this contract shall also apply to the subContractors. The Department shall have the right to request the removal of a subContractor from the contract for good cause.

10.10 Integration. This contract represents the entire contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this contract.

10.11 Headings or Captions. The paragraph headings or captions used in this contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

10.12 Not a Joint Venture. Nothing in this contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent Contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this contract.

10.13 Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this contract, and for any default of activities and obligations.

10.14 Supersedes Former contracts or Agreements. This contract supersedes all prior contracts or agreements between the Department and the Contractor for the services provided in connection with this contract.

10.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

10.16 Notice

10.16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

- If to the Department, send to the Issuing Officer.
- If to the Contractor, send to the Project Officer.

10.16.2 Each such notice shall be deemed to have been provided:

10.16.2.1 At the time it is actually received; or,

10.16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

10.16.2.3 Within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail.

10.16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

10.17 Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

10.18 Severability. If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this contract.

10.19 Time is of the Essence. Time is of the essence with respect to the performance of the terms of this contract.

10.20 Authorization. Each party to this contract represents and warrants to the other parties that:

10.20.1 It has the right, power and authority to enter into and perform its obligations under this contract.

10.20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this contract, and this contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

10.21 Successors in Interest. All the terms, provisions, and conditions of the contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

10.22 Record Retention and Access. The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

10.23 Solicitation. The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

10.24 Obligations Beyond contract Term. This contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this contract. All obligations of the Department and the Contractor incurred or existing under this contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this contract.

10.25 Counterparts. The parties agree that this contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

10.26 Additional Provisions. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

10.27 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this contract.

10.28 Delay or Impossibility of Performance. The Contractor shall not be in default under this contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subContractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of this contract.

10.29 Suspension and Debarment. By signature of this contract, the Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or pronouncement.

10.30 Lobbying Restrictions. By signature of this contract, the Contractor certifies that it shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subContractor fully complies with all certification and disclosure requirements, if the contract uses funds from a federal contract, grant or cooperative agreement exceeding \$100,000 or is a federal loan commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

10.31 Tobacco Smoke Prohibited

10.31.1 By signature of this contract, the Contractor certifies that it shall comply with Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

10.31.2 By signature of this contract, the Contractor certifies that it and its subContractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

10.32 Certified Audits. By signature of this contract, the Contractor certifies that it shall comply with the requirements that local governments and non-profit subrecipient entities that expend \$300,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department.

10.33 Drug Free Work Place. By signature of this contract, the Contractor certifies that it shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

SECTION 11. EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above contract and have caused their duly authorized representatives to execute this contract.

Iowa Association of Municipal Utilities

Iowa Department of Natural Resources

By: Robert Haug, Executive Director

By: Liz Christiansen, Deputy Director

Date: _____

Date: _____

This agreement was approved, as required by Subsection 455B.105(7) of the Code of Iowa, by the Environmental Protection Commission on February 6, 2007.